

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

RHONDA FIRESTACK-HARVEY, LARRY  
HARVEY, MICHELLE GREGG, ROLLAND  
GREGG, and JASON ZUCKER,  
Defendants.

No. CR-13-24-FVS

ORDER DENYING JASON  
ZUCKER'S MOTION TO  
DISMISS BASED UPON THE  
UNITED STATES' FAILURE TO  
PRESERVE EVIDENCE

**THE DEFENDANTS** have filed a number of motions. The Court considered their motions at a pretrial conference that was held on April 22 and 23, 2014. This order addresses defendant Jason Zucker's motion to dismiss the indictment on the ground the United States failed to preserve critical evidence.

**BACKGROUND**

On two occasions during August of 2012, law enforcement officers seized marijuana plants that allegedly were growing at 939 Clugston-Onion Creek Road, Colville, WA. A grand jury returned an Indictment on February 6, 2013. The Court held a pretrial conference on April 2, 2013. The United States requested permission to destroy the marijuana plants. The Court authorized the United States to destroy the plants, but only after counsel for the defendants had a reasonable opportunity

1 to inspect them. The Court entered an order that stated in part, "An  
2 attorney's failure to make arrangements [to inspect] within ten days  
3 of March 29, 2013, shall waive any objection to the destruction of the  
4 marijuana plants." (Order Continuing Trial (ECF No. 141 at 2.)  
5 Defendant Jason Zucker moves to dismiss the Indictment on the ground  
6 the United States failed to preserve the plants that allegedly were  
7 seized by law enforcement officers during August of 2012.  
8

9 **RULING**

10 In order for a defendant to demonstrate he has been deprived of  
11 due process of law by the United States' destruction of evidence, the  
12 defendant must show, at a minimum, that the United States acted in bad  
13 faith. *United States v. Cooper*, 983 F.2d 928, 931 (9th Cir.1993). No  
14 such showing has been made by Mr. Zucker. To the contrary, the United  
15 States destroyed the plants only after raising the issue at a pretrial  
16 conference at which Mr. Zucker and his attorney were present.  
17

18 **IT IS HEREBY ORDERED:**

19 Defendant Jason Zucker's "Motion to Dismiss for Failure to  
20 Preserve" (ECF No. 201) is **denied**.  
21

22 **IT IS SO ORDERED.** The District Court Executive is hereby  
23 directed to enter this order and furnish copies to counsel.

24 **DATED** this 29th day of April, 2014.

25 s/ Fred Van Sickle  
26 Fred Van Sickle  
Senior United States District Judge